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3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON
5

6 UNITED STATES OF AMERICA,

7
8 Plaintiff,

9 vs.

10 TODD ROBERT LUTZ,

11 Defendant.

) No. CR-14-036-JLQ-1
)
) ORDER DENYING MOTION
) FOR RECONSIDERATION
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13 BEFORE THE COURT is Defendant's *pro se* "Motion for Rehearing and/or Notice
14 of Appeal of Courts Denial of Defendants Motion for Reduction of Term of
15 Imprisonment Pursuant 18 U.S.C. § 3582 and USSG Amendment 782" (ECF No.
16 194)(hereafter "Motion").

17 The court issued its Order Denying Motion for Reduction of Sentence (ECF No.
18 191) on April 25, 2017. The instant Motion was received on May 30, 2017, and is signed
19 May 22, 2017. The Motion asks this court to review its prior Order "and/or" accept it as
20 a notice of appeal. The Motion sets forth no valid basis for the court to reconsider its
21 prior Order.

22 To the extent the Motion is a notice of appeal, it is untimely. A 3582 motion "is
23 a criminal motion, which means that the fourteen-day deadline for filing a notice of
24 appeal in a criminal case applies." *United States v. Brown*, 817 F.3d 486, 488 (6th Cir.
25 2016). "Each of the nine circuits to consider the question agrees." *Id.* at 489. The Motion
26 was received 35 days after the court's Order, and was signed and dated 27 days after.
27 Pursuant to Fed.R.App. 4(c) if an inmate is confined the "the notice is timely if it is
28 deposited in the institution's mail system on or before the last day for filing."

ORDER - 1

1 Defendant's Motion is dated May 22, 2017, which is untimely. Pursuant to Fed.R.App.
2 4(b)(4), the court can extend the time for a maximum of 30 days upon a finding of
3 "excusable neglect or good cause". Defendant's submission was within 30 days of the
4 deadline, but it did not address the reason for the untimely filing. The filing of a motion
5 to reconsider does not toll the time or restart the clock for filing a notice of appeal.
6 *Brown*, 817 F.3d at 489.

7 **IT IS HEREBY ORDERED:**

8 1. The Motion (ECF No. 194), to the extent it is a motion for reconsideration, is
9 **DENIED.**

10 2. To the extent the Motion was intended as a Notice of Appeal, it is untimely.
11 The court will allow Mr. Lutz to submit a motion for extension of time for his untimely
12 notice of appeal demonstrating good cause or excusable neglect. Such brief shall be filed
13 no later than **June 22, 2017.**

14 **IT IS SO ORDERED.** The Clerk shall enter this Order and furnish copies to
15 counsel and to Mr. Lutz.

16 Dated June 2, 2017.

17 s/ Justin L. Quackenbush
18 JUSTIN L. QUACKENBUSH
19 SENIOR UNITED STATES DISTRICT JUDGE
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